

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
KRISTIN K. MAYES

7 In the matter of:) DOCKET NO. S-03569A-05-0000
8)
9 **RONALD EARL PFINGSTEN**, a married man)
10 PMB #368, PO Box 439060) **ORDER TO CEASE AND DESIST,**
11 San Ysidro, CA 92143) **ORDER OF DISGORGEMENT,**
12) **ORDER FOR ADMINISTRATIVE**
13 **SHARLENE N. PFINGSTEN**, a married woman) **PENALTIES, AND CONSENT TO SAME**
14 PMB #368, PO Box 439060) **BY: RONALD EARL PFINGSTEN AND**
15 San Ysidro, CA 92143) **SHARLENE N. PFINGSTEN, HUSBAND**
16) **AND WIFE**
17 Respondents.)
18) Decision No. **68161**

19 Respondents RONALD EARL PFINGSTEN and SHARLENE N. PFINGSTEN elect to
20 permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act
21 of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease and
22 Desist, Order of Disgorgement, Order for Administrative Penalties and Consent to Same
23 ("Order"). RONALD EARL PFINGSTEN and SHARLENE N. PFINGSTEN admit the jurisdiction
24 of the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of
25 Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the
26 Commission.

21 **FINDINGS OF FACT**

22 1. Respondent RONALD E. PFINGSTEN ("Respondent"), whose last known residential
23 address is PMB #368, P.O. Box 439060, San Ysidro, California 92143 and last known business
24 address is 9627 W. Lindgren, Sun City, Arizona 85373, is and was, at all times relevant hereto, an
25 insurance agent licensed with the State of Arizona. Mr. Pfingsten is presently retired.
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2. Respondent SHARLENE N. PFINGSTEN, whose last known residential address is PMB #368, P.O. Box 439060, San Ysidro, California 92143, was at all relevant times the spouse of Respondent. SHARLENE N. PFINGSTEN is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

3. At all times relevant, Respondent and SHARLENE N. PFINGSTEN (“Respondent Spouse”) were acting for their own benefit, and for the benefit or in furtherance of the marital community.

4. Mutual Benefits Corporation (“MBC”) is a viatical settlement provider company located at 2881 E. Oakland Park Blvd., Suite 200, Ft. Lauderdale, Florida 33306. MBC sold viatical and life settlements (collectively, “viaticals”) to investors through agents such as insurance and securities persons.

5. From approximately 1995 through January 2003, MBC sold viaticals through individual and business entity agents to Arizona investors.

6. Respondent first learned of the MBC viaticals from JOHN KLATT (“Klatt”). Respondent was told by Klatt that he had been invited to review the business operations of a Florida-based corporation dealing in fractionalized viatical settlement contracts. While visiting the company’s headquarters, Klatt toured the facility, met with company representatives, and conversed with the company’s legal counsel. During these meetings, Klatt was told by MBC representatives that the company’s viaticals were not securities but rather a distinct type of insurance product, and that no securities license was required. Klatt returned to Arizona under the misapprehension that these viaticals were not subject to state or federal securities laws. Based on Respondent’s conversations with Klatt, Respondent, in late-1999, Respondent began offering and selling viatical settlement contracts to various clients as a subagent of Klatt.

7. Contrary to Respondent’s understanding, investments in MBC viaticals actually contained a number of inherent risks, including the fact that the insurance policies underlying these investments could lapse if any of the premium payments were missed, that insurance

1 companies underwriting the subject insurance policies could fall into insolvency, that medical
2 prognoses for the various viators could be distorted or exaggerated, or that payments on one or
3 more of the insurance policies could be challenged and/or denied by insurance companies on the
4 basis of insurance fraud.

5 8. The misinformation on “risk” was exacerbated by fundamental defects in the MBC
6 viatical settlement program itself. Prospective investors were presented materials showing that
7 the medical condition and prognoses of the viators underlying the viatical settlement contracts had
8 been re-evaluated and confirmed by a second practicing physician. Specifically, MBC
9 promotional materials claimed that a second physician engaged directly by MBC had consulted
10 with treating physicians for the various viators, had reviewed these patients’ medical files and,
11 with this information, had reached an informed opinion as to the viators’ life expectancies. The
12 validity of these life expectancy projections had a natural bearing on both the value and maturity
13 terms of these MBC policies.

14 9. In fact, at least one “independent” MBC-hired physician failed to discuss the
15 condition of these patients with their attending physicians and failed to review their medical files
16 prior to the assignment of life expectancy projections. Respondent was not aware of this practice.

17 10. From approximately late-1999 through December 2000, Respondent offered and
18 sold approximately 12 MBC viaticals to at least 8 known investors. Respondent received
19 commissions from MBC (or one of its agents) for these Arizona sales.

20 11. The Respondent’s viatical sales were not registered as securities nor were they
21 exempt from registration.

22 12. At all times relevant, MBC was not registered as a securities dealer in Arizona and
23 Respondent was not registered as securities salesman in Arizona nor were they exempt from
24 registration.

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II.**CONCLUSIONS OF LAW**

1. Respondent offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

2. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

3. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

4. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

5. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the Respondent and Respondent Spouse consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, his agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent and Respondent Spouse shall, jointly and severally, disgorge all sales commissions earned in connection with Respondent's sales activities in this matter; as reflected in the records of the Commission, such disgorgement shall be the in the amount of \$15,000 ("Disgorgement"). Payment shall become immediately due and payable upon entry of this Order.

Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the

Commission. The Commission shall disburse the funds on a pro rata basis to all of Respondent's MBC investors who, as reflected in the records of the Division, possess viatical settlement contracts that have yet to mature as of the entry date of this Order. Any funds that the Commission is unable to disburse shall revert to the state of Arizona.

If Respondent and Respondent Spouse do not comply with the terms and conditions of this disgorgement, any outstanding balance may be deemed in default and, in such case, shall become immediately due and payable; disgorgement amounts deemed in default shall accrue interest at the rate of 10% per annum until paid in full.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent and Respondent Spouse shall, jointly and severally, pay an administrative penalty in the amount of One Thousand and 00/100 Dollars (\$1,000.00). Administrative penalty amounts shall become immediately due and payable upon entry of this Order. If Respondent and Respondent Spouse do not comply with this Order for administrative penalties, any outstanding balance may be deemed in default and, in such case, shall become immediately due and payable; all outstanding administrative penalty amounts shall accrue interest at the rate of 10% per annum until paid in full.

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

/s/ Jeffrey Hatch-Miller

CHAIRMAN

COMMISSIONER

/s/ Marc Spitzer

COMMISSIONER

/s/ Lowell S. Gleason

COMMISSIONER

/s/ Kristin Mayes

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
Executive Director of the Arizona Corporation
Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this 23rd day of
September, 2005.

/s/ Brian C. McNeil

BRIAN C. McNEIL

Executive Director

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, Executive Assistant to the Executive Director, phone number (602) 542-3931, E-mail LHogan@cc.state.az.us.

(JC)

CONSENT TO ENTRY OF ORDER

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2 1. RONALD EARL PFINGSTEN and SHARLENE N. PFINGSTEN, husband and
3 wife, including their marital community, (collectively, "RESPONDENTS") admit the jurisdiction
4 of the Commission over the subject matter of this proceeding. RESPONDENTS acknowledge
5 that they have been fully advised of their right to a hearing to present evidence and call witnesses
6 and knowingly and voluntarily waive any and all rights to a hearing before the Commission and
7 all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the
8 Arizona Administrative Code. RESPONDENTS acknowledge that this Order to Cease and
9 Desist, Order of Disgorgement, Order for Administrative Penalties and Consent to Same
10 ("Order") constitutes a valid final order of the Commission.

11 2. RESPONDENTS knowingly and voluntarily waive any right under Article 12 of
12 the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
13 resulting from the entry of this Order.

14 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. RESPONDENTS acknowledge and agree that by signing this Order to recognize
17 any and all obligations, liabilities, responsibilities, and encumbrances as set forth in this Order,
18 and each of them agree that said obligations, liabilities, responsibilities, and encumbrances are
19 nondischargeable under 11.U.S.C. §§523(a)(2), (7) and (19).

20 5. RESPONDENTS acknowledge that they have been represented by counsel in this
21 matter and that they have reviewed this Order with their attorney and understands all terms
22 contained therein.

23 6. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of
24 Law contained in this Order. RESPONDENTS agree that it shall not challenge their validity in
25 any present or future administrative proceeding before the Commission or any other state agency
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1 concerning the denial or issuance of any license or registration required by the State to engage in
2 the practice of any business or profession.

3 7. By consenting to the entry of this Order, RESPONDENTS agree not to take any
4 action or to make, or permit to be made, any public statement denying, directly or indirectly, any
5 Finding of Fact or Conclusion of Law contained in this Order, or to create the impression that this
6 Order is without factual basis. Notwithstanding the foregoing, this Order is not intended to
7 collaterally estop, factually bind or preclude the RESPONDENTS from defending themselves in
8 any administrative, civil or criminal proceedings to which the Commission is not a party.
9 RESPONDENTS shall undertake steps necessary to assure that all of their agents and employees
10 understand and comply with this agreement.

11 8. While this Order settles this administrative matter between the RESPONDENTS
12 and the Commission, RESPONDENTS understand that this Order does not preclude the
13 Commission from instituting other administrative proceedings based on violations that are not
14 addressed by this Order.

15 9. RESPONDENTS understand that this Order does not preclude the Commission
16 from referring this matter to any governmental agency for administrative, civil, or criminal
17 proceedings that may be related to the matters addressed by this Order.

18 10. RESPONDENTS understand that this Order does not preclude any other agency or
19 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
20 proceedings that may be related to matters addressed by this Order.

21 11. RESPONDENTS agrees that they will not apply to the state of Arizona for
22 registration under the Securities Act of Arizona or under the Arizona Investment Management
23 Act for at least one year from the entry date of this Order *and* until such time as all each of them
24 have complied with all terms and conditions of this Order, including the payment in full of all
25 disgorgement amounts and administrative penalties promulgated under this Order.
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12. RESPONDENTS agrees that they will not exercise any control over any entity that offers or sells securities or provides investment advisory services, within or from Arizona, until such time that he has (a) complied with all terms and conditions promulgated under this Order, and (b) obtained the legal authority to do so.

13. RESPONDENTS agree that until disgorgement and penalties are paid in full, each of them shall notify the Director of the Securities Division within 30 days of any change in home address or any change in any of their ability to pay amounts due under this Order.

14. RESPONDENTS understand that a default shall render them liable to the Commission for its costs of collection and interest at the maximum legal rate.

15. RESPONDENTS understand and agree that each of them shall cooperate fully with the Securities Division by, without limitation, providing information pertinent to any related investigation and, if necessary, presenting complete and accurate testimony at any related hearing. RESONDENTS agrees that each of them shall similarly cooperate with any other agency of the state of Arizona in any investigation or in any other matter arising from the activities described in this Order.

16. RESPONDENTS acknowledge that any penalties imposed by this Order are obligations of each of them as well as the marital community.

17. RESPONDENTS consent to the entry of this Order and agrees to be fully bound by its terms and conditions. *If any of the RESPONDENTS breaches any provision of this Order, the Commission may vacate this Order and restore this case to its active docket.*

Agreed: /s/ Ronald Earl Pfingsten
RONALD EARL PFINGSTEN

Agreed: /s/ Sharlene Pfingsten
SHARLENE N. PFINGSTEN

/s/ Luz Ma. Liberato
NOTARY PUBLIC

My Commission Expires:

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